IN THE

# District Court of the United States

WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

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| L. T. BARRINGER AND COMPANY, Plaintiff, vs. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants. | Civil Action File No. 431 |

## JURISDICTIONAL STATEMENT BY PLAINTIFF UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

L. T. Barringer and Company, plaintiff, respectfully presents the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree in the above-entitled cause sought to be reviewed:

## A. Statutory provisions.

The statutory provisions believed to sustain the jurisdiction of the Supreme Court are:

U. S. C., Title 28, Section 41 (28) [Act of June 18, 1910, c. 309, section 1, 36 Stat. 539; as amended March 3, 1911, c. 231, section 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219].

U. S. C., Title 28, Section 44 [Act of October 22, 1913, c. 32, 38 Stat. 220; as amended February 13, 1925, c. 229, section 1, 43 Stat. 938; October 22, 1913, c. 32, 38 Stat. 220].

U. S. C. Title 28, Section 45 [Act of June 18, 1910, c. 309, section 1, 36 Stat. 539; as amended March 3, 1911, c. 231, section 209, 36 Stat. 1149; October 22, 1913, c. 32, 38 Stat. 219].

U. S. C., Title 28, Section 46 [Act of June 18, 1910, c. 309, section 3, 36 Stat. 542; as amended March 3, 1911, c. 231, section 208, 36 Stat. 1149; October 22, 1913, c. 32, 38 Stat. 218].

U. S. C., Title 28, Section 47 [Act of October 22, 1913, c. 32, 38 Stat. 220].

U. S. C., Title 28, Section 47a [Act of March 3, 1911, c. 231, section 240, 36 Stat. 1150; as amended October 22, 1913, c. 32, 38 Stat. 220].

U. S. C., Title 28, Section 345 [Act of March 3, 1911, c. 231, section 238, 36 Stat. 1157; as amended January 28, 1915, c. 22, section 2, 38 Stat. 804; February 13, 1925, c. 229, section 1, 43 Stat. 938].

**B. The statute of a state, or the statutes or treaty of the United States, the validity of which is involved.**

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved.

**C. The date of the judgment or decree sought to be reviewed and the date upon which the application for appeal was presented.**

The decree sought to be reviewed was entered on August 17, 1942. The petition for appeal was presented and allowed on October 7, 1942, together with the assignment of errors.

**D. Nature of the case and of the rulings of the Court bringing the case within the jurisdictional provisions relied on.**

This is an appeal from a decree of a specially constituted three-judge statutory court, convened under the provisions of the Urgent Deficiencies Appropriations Act, October 22, 1913, c. 32, 38 Stat. 220 (U. S. C., Title 28, Section 47), in the District Court of the United States for the Western District of Tennessee, Western Division, which decree was rendered August 17, 1942. Plaintiff had filed its complaint to enjoin, annul, and set aside an order of the Interstate Commerce Commission entered in its proceeding *Investigation and Suspension Docket No. 4981.*

The proceeding before the Commission came about as follows: Cotton produced in Oklahoma is transported via rail in small lots from gin points to concentrating points, at which latter points it is concentrated (assembled into carload lots) and reshipped under

transit in carloads to the Gulf ports and to domestic mills located in the Southeast and the Carolinas. The primary obligation of loading the cotton at gin points is on the shippers since the movement is in carload rates, which rates are generally considered as not including the services of loading or unloading. However, for many years the railroads who intervened as defendants in this suit provided by their tariffs that, if requested, they would perform the loading service at the inception of the movement from gin origins to concentrating points, provided the shipper tendered his cotton to them at railroad depots or cotton platforms. These tariffs further provided that when such loading service is rendered, a separate charge would be made therefor of 5.5 cents per square bale and 2.75 cents per round bale.

By tariffs filed to become effective July 11, 1941, the intervening railroad defendants proposed to cancel this loading charge as to cotton reshipped from concentrating points in carload to Texas Gulf ports and to Lake Charles, La., while continuing the charge on cotton loaded at the same gin points and reshipped in carloads from the same concentrating points to all other destinations. The plaintiff, a corporation which purchases cotton in Oklahoma for shipment to domestic mills in the Southeast and the Carolinas in competition with other merchants purchasing cotton at same origins for shipment to the Texas Gulf ports, protested this change in the tariffs to the Interstate Commerce Commission on the ground that if made effective it would violate Sections 2 and 3 of the Interstate Commerce Act. Section 2 prohibits unjust discrimination which the section defines as the collection from any person of a greater or less compensation for any service rendered in the transportation of property than is col-

lected from any other person for doing him a like and contemporaneous service in the transportation of like traffic under substantial similar circumstances and conditions. Section 3 prohibits undue preference and prejudice as between persons, localities, particular descriptions of traffic, etc. Thereupon, the Interstate Commerce Commission suspended the operation of the proposed tariffs pending an investigation into the lawfulness thereof as authorized by Section 15 (7) of the Interstate Commerce Act.

Hearing was had and after briefs and oral argument, the Commission, Division 3, issued its report and order on January 29, 1942, finding that the proposed change was just and reasonable and not shown to be otherwise unlawful. Accordingly, it vacated the suspension order and discontinued the proceedings. Plaintiff filed its petition for reconsideration, which was denied, and the new tariffs finally went into effect on April 21, 1942. By its complaint in the District Court, the plaintiff sought to enjoin, annul, and set aside the order of the Commission which vacated the order of suspension and discontinued the proceedings on the ground that the Commission has not exercised its authority in accordance with the governing statute.

The three-judge court held a hearing on the plaintiff's application for injunction on July 8, 1942, after answers had been filed by the defendants, United States and Interstate Commerce Commission, and the intervening defendants, who were the railroads publishing the involved tariffs. The record before the Commission was offered and received in evidence, together with other exhibits, and briefs were filed. After hearing oral argument and receiving suggested findings of fact and conclusions of law, the court handed down its decision

dismissing the complaint, making certain findings of fact and conclusions of law which plaintiff seeks to have reviewed by this appeal.

The principal questions involved on appeal as to which the trial court held against the plaintiff are: (a) Does the report and order of the Commission contain essential basic findings sufficient to disclose a correct construction and application of the Interstate Commerce Act to the facts of record; (b) Are the findings of the Interstate Commerce Commission supported by the evidence; (c) Did the Interstate Commerce Commission correctly construe and apply Sections 2 and 3 of the Interstate Commerce Act; and (d) In arriving at its ultimate conclusion, did the Commission give consideration to matters which could not legally influence its judgment? The following cases are believed to sustain the jurisdiction of the Supreme Court to review such questions on appeal:

(a) *United States* v. *Carolina Freight Carriers Corporation* (1942), 315 U. S. 475;

*United States* v. *Chicago, M. St. P. & P. R. Co.* (1935), 294 U. S. 499, 506;

(b) *Baltimore & Ohio R. R. Co.* v. *United States*, (1924), 264 U. S. 258, 262-3;

*Florida E. C. R. Co.* v. *United States* (1914), 234 U. S. 167, 186, 188;

(c) *Rochester Telephone Corporation* v. *United States* (1939), 307 U. S. 125, 134, 142;

*Central Railroad Co. of New Jersey* v. *United States* (1921), 257 U. S. 247;

*Interstate Commerce Commission* v. *D. L. & W. R. Co.* (1911), 220 U. S. 235, 253-4;

(d) *Mitchell* v. *United States* (1941), 313 U. S. 80;

*Ann Arbor R. Co.* v. *United States* (1930), 281 U. S. 658, 666;

*Southern P. Co.* v. *Interstate Commerce Commission* (1911), 219 U. S. 433.

**E. The questions involved are substantial.**

The more important questions involved in this case are as to statutory construction and application.

As to Section 2 of the Interstate Commerce Act the questions are: (1) Does the competition of the railroad defendants with carriers by motor truck for cotton shipped from points in Oklahoma to Gulf ports, when accompanied by a lack of such competition as to cotton shipped from identical stations to the Southeast, constitute a dissimilarity of circumstances and conditions within the meaning of the section so as to make the prohibition of the section inapplicable to the granting of a free loading service in the one instance and the assessment of a separately stated charge for an identical loading service in the other instance; (2) Does the difference in ultimate destinations to which the cotton is shipped after loading constitute such a dissimilarity of circumstances and conditions in a case which involves only the lawfulness of a proposal to make a difference in the charges assessed for an identical loading service; (3) Does the difference in the relative levels of the rates assessed for the line-haul services, which rates are separately stated from the loading charge, constitute such a dissimilarity of circumstances and conditions when the issue involves only the loading charge? The Commission and the trial court disposed of the case on the theory that each of the foregoing questions should be answered in the affirmative. That would seem to be contrary to the construction accorded Section 2 of the Interstate Commerce Act in *Wight* v. *United States* (1897), 167 U. S. 512; *Interstate Commerce Commission* v. *Delaware, L. & W. R. Co.* (1911), 220 U. S. 235; *Interstate Commerce Commission* v. *B. & O. R. R. Co.* (1912), 225 U. S. 326; *Seaboard Air Line*

*Railway Co.* v. *United States* (1920), 254 U. S. 57. The foregoing cases hold that the only circumstances and conditions to be considered in applying Section 2 are those which relate directly to the physical service for which the particular charges in issue are applied. By analogy it would seem that a difference in truck competition for the line-haul move, a difference in destinations, and a difference in the relative levels of the line-haul rates are not within the circumstances and conditions to be considered in applying Section 2 in a case which involves only the accessorial service of loading and the charges therefor. Whether the suggested analogy is sound is a question of substantial importance and its determination is necessary in order to provide definite guidance for the Interstate Commerce Commission and those who appear before it as to the precise application of Section 2.

As to Section 3, the question is: When the only matter in issue is the lawfulness of a proposed tariff which relates to a separately stated charge for loading cotton at point of initial shipment, the proposal being to eliminate such separately stated charge on cotton shipped to Gulf ports and to continue such separately stated charge on cotton shipped from the same origins to the Southeast, did the Commission act within its authority when it concluded that the assailed difference in these charges is justified because it is offset by a relatively lower rate for line-haul service to the Gulf ports than to the Southeast. The conclusion of the Commission just mentioned, which the trial court approved, would seem to be contrary to the rule announced in *Interstate Commerce Commission* v. *Stickney* (1909), 215 U. S. 98, 105, 109. In that case, however, the Supreme Court dealt with the powers of the Commission under Section 1 of the Act holding that the Commission had no authority,

when passing upon the reasonableness of a separately stated terminal charge, to merge that charge with the rates for line-haul transportation before passing upon the lawfulness thereof. This case presents the same question under Section 3 of the Act, which is a legal question of substantial importance.

The case also involves questions as to the lack of basic findings in the report and as to the failure of the evidence to support the findings made. While these questions are of immediate importance only to those who were parties to the litigation before the Commission, they are believed to be substantial questions from the standpoint of orderly and reasoned procedure.

## F. Decree, findings of fact, and conclusions of law of the District Court.

A copy of the opinion, and of the findings of fact and conclusions of law of the District Court, and a copy of the decree sought to be reviewed, are appended to this statement.

Plaintiff, therefore, respectfully submits that the Supreme Court of the United States has jurisdiction of the appeal.

Dated October 7, 1942.

AUVERGNE WILLIAMS,
Exchange Building,
Memphis, Tennessee.

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Chicago, Illinois.

*Attorneys for L. T. Barringer and Company, Plaintiff.*

## APPENDIX TO THE JURISDICTIONAL STATEMENT.

IN THE DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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| L. T. Barringer & Company, *Plaintiff*; v. United States of America and Interstate Commerce Commission, *Defendant*. | Civil Action No. 431. |

*Before Martin, Circuit Judge, and Darr and Boyd, District Judges.*

PER CURIAM: This cause came on to be heard on the complaint of L. T. Barringer & Company praying a perpetual injunction and cancellation of the operation and effect of an order of the Interstate Commerce Commission dated January 29, 1942, and upon the responsive pleadings of the defendants and interveners, and upon the full record in the cause, including the order of the Interstate Commerce Commission, the transcript of the hearing before the Interstate Commerce Commission, and exhibits filed and considered at such hearing.

The Court is of opinion that the Interstate Commerce Commission, in its report, made essential basic findings of fact, supported by substantial evidence of record; and that the order of the Commission is lawful.

Contemporaneously herewith, the Court has filed findings of fact and conclusions of law deemed appropriate.

The complaint, accordingly, is dismissed with proper costs.

Entered—July 17, 1942.

JOHN D. MARTIN,
*Circuit Judge.*

LESLIE R. DARR,
*District Judge.*

MARION S. BOYD,
*District Judge.*

IN THE DISTRICT COURT OF THE UNITED STATES
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## FINDINGS OF FACT AND CONCLUSIONS OF LAW.

In the above entitled case, the Court makes the following findings of fact and of law:

### FINDINGS OF FACT.

1. For some years prior to April 21, 1942, the railroads which have intervened in this suit and the Oklahoma Railway Company maintained on cotton re-shipped from concentrating points under carload rates a loading charge of 5.5 cents per square bale and 2.75 cents per round bale if the cotton was loaded by said railroads at a point of origin served by them in Oklahoma after tender to said railroads at a depot or cotton platform for shipment therefrom to the concentrating point.

2. Said loading charge is contained as a separate item in the rate and transit tariffs filed by said railroads with the Interstate Commerce Commission (hereinafter referred to as the Commission) and applied to all such cotton so tendered and loaded by said railroads, regardless of the ultimate destination to which said cotton was reshipped in carloads from the concentrating point.

3. Said loading charge was a charge which was maintained and assessed by the individual railroad performing the loading service.

4. The cotton to which said loading charge applied was handled and the rates and charges accruing thereon were collected in the following manner: The cotton originated at a country station (hereinafter referred to as a gin point) at which point it was tendered to the railroad at its depot or cotton platform by a shipper, with the request that the cotton be loaded by the railroad and transported to a nearby compress. When so tendered, the carrier loaded the cotton into a car, utilizing the labor of its agency forces or section gangs. The cotton was then transported in lots of one bale or more to the nearby compress specified by the shipper and, upon said movement, the carrier collected its local "float-in" or transit rate for the inbound line-haul service from the gin point to the compress station. Ordinarily, the charge for loading was not collected at that time but, as authorized by the railroad tariffs, followed the shipment as an advance charge, such advance charge being inserted in the original bill of lading. At some later date, after compression, the cotton was reshipped in a carload lot to a final destination, such as a gulf port or a domestic mill in the southeast or the Carolinas. At the time of that reshipment, the carrier collected its carload rate from the compress station to final destination for the outbound line-haul service rendered. The carriers maintained in tariffs filed with the Commission various levels of carload rates made dependent upon the minimum weight loaded, the different carload rates being governed by minima of 25,000, 35,000, 50,000, and 65,000 pounds. On cotton so transported, the railroad tariffs authorized a subsequent readjustment of the inbound and outbound rates as originally assessed for

line-haul services to the basis of the through carload rate from the gin point to final destination. This is called a transit settlement and the loading charge, when applicable, was ordinarily collected at the time the transit settlement was made.

5. By tariffs filed with the Commission to become effective June 11, 1941, the railroads referred to in paragraph 1 above (said railroads being hereinafter referred to as respondents) proposed to cancel the loading charge hereinabove described on cotton reshipped to Beaumont, Corpus Christi, Galveston, Houston, Orange, Port Arthur, and Texas City, Texas, and Lake Charles, La. (said destinations being hereinafter referred to as the Texas ports), and to continue said loading charge on cotton reshipped in carloads from concentrating points to all other destinations.

6. On petition and protest from numerous interests, including L. T. Barringer and Company, the plaintiff herein, the Commission, acting under the authority conferred upon it by Section 15(7) of the Interstate Commerce Act entered an order on June 10, 1941, which postponed the effective date of said schedules until January 11, 1942, and instituted an investigation into the lawfulness thereof. The proceeding instituted by the Commission was entitled Investigation and Suspension Docket No. 4981, Loading Cotton in Oklahoma, and will be hereinafter referred to as I. & S. 4981. Subsequently, the respondents further postponed the effective date of said schedules until the termination of the proceedings before the Commission.

7. Hearing was had in I. & S. 4981 before an examiner of the Commission at New Orleans, La., on July 19, 1941, at which evidence was received from the respondents who supported the schedules and from the pro-

testants, including the plaintiff, who opposed the proposed schedules.

8. On January 29, 1942, after full hearing, brief, and oral argument, the Commission, by Division 3, entered a report in I. & S. Docket No. 4981 setting forth its findings of fact and conclusions, and holding that the elimination of the loading charge on cotton originating in Oklahoma, compressed in transit, and moving from the compress points to the Gulf ports in question of the carload rate from origin point is just and reasonable and not otherwise unlawful. With said report, and as a part thereof, the Commission entered an order dated January 29, 1942, which vacated and set aside the previously entered order of suspension in I. & S. Docket 4981 as of February 21, 1942, and discontinued the proceeding.

9. On February 18, 1942, the plaintiff filed with the Commission its petition for reconsideration in said proceeding in which it urged that under the facts and law the Commission should have found the proposal to be unlawful and in violation of Sections 2 and 3 of the Interstate Commerce Act, and requested that the report and order of January 29, 1942, be modified accordingly and the respondents be required to cancel the proposed change. The Commission, pending action on that petition, deferred the effective date of its order of January 29, 1942, to April 21, 1942.

10. By order of April 13, 1942, the Commission denied the petition of the plaintiff for reconsideration and the change in the tariff schedules was permitted to and did become effective on April 21, 1942, and is now in effect.

11. Plaintiff, L. T. Barringer and Company, a cotton merchant of Memphis, Tennessee, by bill of complaint

filed on or about May 11, 1942, prays that this Court perpetually enjoin and set aside the operation and effect of the said order of the Commission of January 29, 1942.

12. By order entered on June 29, 1942, the Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Panhandle & Santa Fe Railway Company, Missouri-Kansas-Texas Railroad Company and Kansas City Southern Railway Company, respondents before the Commission in I. & S. Docket No. 4981, were permitted to intervene as parties defendant herein.

13. The physical service of loading cotton tendered to a respondent at any particular depot or cotton platform in Oklahoma for shipment to a particular concentrating point is the same on cotton subsequently reshipped in a carload from the concentrating point to the Texas ports as on cotton subsequently reshipped in a carload from the concentrating point to other destinations, such as domestic mill points in the southeast or the Carolinas.

14. The tariff change approved by the Commission provides for the loading of cotton without charge when reshipped from concentrating point, in carloads, to the Texas ports only if the cotton is tendered to a respondent at its depot or cotton platform at the inception of the inbound line-haul move from gin point to compress station, and does not apply to cotton loaded into a car at a compress, and does not apply to cotton other than that which moves from the station at which loaded to a concentrating point on the basis of inbound "float-in" or transit rates.

15. Hearing before this Court, specially constituted of three Judges as required by the Urgent Deficiencies

Act, was held July 8, 1942. A certified copy of the oral testimony and documentary exhibits introduced in the proceeding before the Commission and certain other documents considered by the Commission, were received in evidence by the Court, together with an affidavit filed by plaintiff, which was received solely on the question whether plaintiff possesses sufficient legal interest to bring and maintain this suit.

16. With its order of January 29, 1942, the Commission issued a report containing its findings of fact, decision and conclusions.

17. Upon the hearing before the Commission, the respondents sought to justify the difference in the charges for loading cotton reshipped to the Texas ports, on the one hand, as compared with the charges for loading cotton reshipped to all other destinations, on the other hand, on two grounds, among others, &c., (1) they urged that the free loading to the Texas ports was necessary to meet truck competition and that there was no truck competition to the southeast and to the Carolinas; and (2) they contended that the difference in loading charge was justified because the carload rates assessed for the line-haul services from Oklahoma to the southeast and the Carolinas are relatively lower than the carload rates assessed for the line-haul services from Oklahoma to the Texas ports.

18. As to the first ground: the evidence before the Commission showed the same truck competition from gin points to compress stations for cotton later reshipped to the southeast and the Carolinas as for cotton later reshipped to the Texas ports.

19. As to the first ground: the evidence also showed there was no truck competition from Oklahoma compresses to southeastern or Carolina destinations, al-

though there was truck competition from Oklahoma compresses to the Texas ports.

20. As to the first ground: the only destination embraced within the term "Texas ports" for which any evidence was presented as to specific tonnage of cotton transported by truck from Oklahoma gin points was Houston, Texas.

21. As to the second ground: the evidence before the Commission was confined to a comparison of the rates, distance, ton mile earnings, and car mile earnings involved, but no evidence was offered as to the specific costs of the respective line-haul services or as to any transportation circumstance and condition incident to line-haul services other than the mere matter of distance.

22. The evidence offered before the Commission by the plaintiff showed that it purchases cotton in Oklahoma for reshipment to the southeast and Carolinas in competition with other merchants purchasing cotton in Oklahoma for reshipment to the Texas ports; that if the proposed change were permitted to become effective, the plaintiff would be compelled to pay a charge for having its cotton loaded by the respondents, while its competitors would be able to obtain a similar loading service from the respondents without charge; and that this difference in charges would impose a competitive disadvantage upon the plaintiff in the purchasing of Oklahoma cotton.

23. The Court adopts as its own the findings of fact set forth in the said report of the Commission.

24. The Commission found, *inter alia*, that there is (1) no trucking of cotton between points in Oklahoma and the Southeast, whereas there is trucking of cotton between points in Oklahoma and the Gulf ports, (2) that

the carload rates on cotton from Oklahoma origins to the Southeast are on a relatively lower basis than the carload rates on cotton from the same origin to the Gulf ports, and (3) that the rates from points in Oklahoma both to the Southeast and to the Gulf ports are depressed.

25. The Commission also found, *inter alia:*

"In the Southwestern Cotton case the Commission at page 724 said:

"'The practices which may have prevailed in the past with respect to free transit are no criteria in the present circumstances. In the past there was substantially no unregulated competition and the rates were not depressed. If the carriers gave a free service in one instance it was not unreasonable to expect them to give it in another. Now the situation has changed. In the present circumstances it is not only the carriers' right but their duty to conduct their operations in the most economical manner possible, in order to retain the greatest net revenue out of the low competitive rates which they are compelled to charge. The fact that they have provided certain transit services without charge in addition to the transportation rates, in instances where that seems to be good business policy from a competitive standpoint affords no basis for requiring them to assume the additional burden and expense incident to such services where the opportunities for corresponding benefits to them are lacking.'

"This was said with reference to the circumstances which distinguish the granting of transit in the interior but not at the ports. It applies with equal force to either of the situations presented in the proceedings now before us."

26. The ultimate findings of the Commission were:

"We, therefore, find that the elimination of the rail carriers' loading charge on cotton originating in Oklahoma on respondents' lines, compressed in transit and moving from compress point to Texas-Gulf ports and Lake Charles, La., at the carload rate from origin point, is just and reasonable and not shown to be otherwise unlawful.

"We further find that the re-establishment of the loading charge on shipments of cotton originating in Texas on the St. Louis, San Francisco and Texas Railway Company and destined to the same points, including New Orleans, La., for export, is just and reasonable and not shown to be otherwise unlawful."

## Conclusions of Law.

1. The Interstate Commerce Commission in its report made essential basic findings of fact, supported by substantial evidence of record.

2. The Commission did not exceed its authority and the power conferred upon it by the Interstate Commerce Act in entering the order sought to be enjoined, and the Commission's action was not arbitrary.

3. The findings of the Commission are adequately supported by substantial evidence.

4. In determining whether or not the provisions of Sections 2 and 3 of the Interstate Commerce Act have been violated by the publication of the tariffs under consideration herein the Commission properly considered the dissimilarity in circumstances and conditions between the line-haul movement of cotton from Oklahoma origins to the southeast and the line-haul movement of cotton from Oklahoma points to the Gulf ports here involved.

5. The Commission's findings support its ultimate conclusion that the rail tariffs under consideration are just and reasonable and not otherwise unlawful.

Entered July 17, 1942.

John D. Martin,
*Circuit Judge.*

Leslie R. Darr,
*District Judge.*

Marion S. Boyd,
*District Judge.*

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF TENNESSEE.

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| L. T. Barringer & Company, *Plaintiff,* vs. United States of America and The Interstate Commerce Commission, *Defendants.* | Civil No. 431. |

FINAL DECREE.

This cause having been heard upon the pleadings, the testimony and exhibits submitted before the Interstate Commerce Commission, and the oral and written arguments of counsel, and the Court now being fully advised in the premises, it having made and entered findings of fact and conclusions of law, it is by the court this 17th day of August, 1942:

Ordered, Adjudged and Decreed, That the complaint be, and it is hereby, dismissed for want of equity at the plaintiff's costs.

JOHN D. MARTIN,
*United States Circuit Judge.*

LESLIE R. DARR,
*United States District Judge.*

MARION S. BOYD,
*United States District Judge.*